

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JAMES MCNAIR,

Petitioner-Appellant,

v.

K. JOHNSON,

Respondent-Appellee.

On Appeal from the United States District Court
for the Northern District of Florida
No. 4:23-cv-00505-MW-MAF (Hon. Mark E. Walker)

APPELLANT'S NOTICE OF NON-RESPONSE

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1(a)(1) and 26.1-2(c), Appellant James McNair, through undersigned counsel, hereby submits this Certificate of Interested Persons and Corporate Disclosure Statement.

Mr. McNair states that he is not a corporation, does not have a parent corporation, nor has he issued shares or debt securities to the public. Mr. McNair is not a subsidiary or affiliate of any publicly owned corporations.

I hereby certify that the following have an interest in the outcome of this appeal:

1. Arnold & Porter Kaye Scholer LLP, *Attorneys for Appellant*
2. Fahlman, Claire, *Attorney for Appellant*
3. Fitzpatrick, Honorable Martin A., *Magistrate Judge*
4. Jones, R. Stanton, *Attorney for Appellant*
5. K. Johnson, *Defendant-Appellee*
6. Masiello, Nicole, *Attorney for Appellant*
7. McNair, James, *Plaintiff-Appellant*
8. Or, Dana, *Attorney for Appellant*
9. Tutt, Andrew T., *Attorney for Appellant*
10. Walker, Honorable Mark E., *District Court Judge*

11. Weng, Katie, *Attorney for Appellant*

Dated: April 30, 2024

Respectfully submitted,

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APPELLANT’S NOTICE OF NON-RESPONSE

Appellant James McNair respectfully gives notice that, as of the April 27, 2024 deadline to file Appellee’s Brief, no brief has been served or filed.

Service of the complaint and summons was never made in this case because Mr. McNair was granted leave to proceed *in forma pauperis* by the district court—meaning the district court was responsible for serving the defendant¹—but the district court never served the defendant, instead the court dismissed the complaint *sua sponte* at the screening stage. See Order Accepting R. & R., *McNair v. Johnson*,

¹ See *McNair v. Johnson*, No. 4:23-cv-00505 (N.D. Fla.), ECF No. 8 (granting leave to proceed *in forma pauperis*). As the instructions for *pro se* civil rights litigants state at paragraph seven:

7. If you are financially able to pay the filing fee, you must also pay for service of the complaint upon Defendants, although you may seek assistance from the Court. Those who are allowed to proceed *in forma pauperis* are entitled to service of the complaint upon Defendants by the United States Marshal. If you are granted leave to proceed *in forma pauperis*, you should not attempt to effect service of the complaint by yourself, nor should you mail any Defendant a request for waiver of formal service pursuant to Rule 4 of the Federal Rules of Civil Procedure. The Court will order the United States Marshal to serve the complaint on the Defendants at the appropriate time.

United States District Court Northern District of Florida Instructions for Pro Se, Prisoner Litigants Filing Civil Rights Complaints in Actions Under 28 U.S.C. § 1331 or §1346 or 42 U.S.C. § 1983 at 2 ¶ 7, <https://bit.ly/4bebvMk> (emphasis in original). See also *Waseleski v. City of Brooklyn*, 2024 WL 1767279, at *4 (N.D. Ohio Apr. 24, 2024) (collecting authorities stating that Federal Rule of Civil Procedure 4(m)’s service period is tolled until a district court screens and directs service of an *in forma pauperis* complaint).

No. 4:23-cv-00505 (N.D. Fla.), ECF No. 11. Thus, the defendant was never served and there is no appellee here to defend the judgment below.

Mr. McNair requests that this Court summarily reverse the lower court's dismissal on the basis of the arguments set forth in his Brief, *see* ECF No. 15. Alternatively, in lieu of summary action in this appeal, the Court may wish to appoint an *amicus curiae* to defend the decision below.

Dated: April 30, 2024

Respectfully submitted,

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Counsel for Appellant James McNair

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Intent to File an Application for a Certificate of Appealability was filed electronically on April 30, 2024 and will therefore be served electronically upon all counsel.

/s/ Nicole Masiello

Nicole Masiello

Counsel for Appellant James McNair